

PT 97-38
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

ST. CLARE MEDICAL)	
CENTER of MONROE,)	Docket No: 94-89-2
WISCONSIN,)	
APPLICANT)	
)	
v.)	Real Estate Exemption
)	for 1994 Tax Year
)	
DEPARTMENT OF REVENUE)	P.I.N.: 18-18-02-101-001
STATE OF ILLINOIS)	
)	Alan I. Marcus,
)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Robert Plager of Plager, Hasting & Krug appeared on behalf of St. Clare Hospital of Monroe, Wisconsin, Inc.

SYNOPSIS: This proceeding raises the limited issue of whether Stephenson County Parcel Number 18-18-02-101-001 qualifies for exemption from 1994 real estate taxes on grounds that it was "actually and exclusively used for charitable or beneficent purposes" within the meaning of 35 ILCS 200/15-65.¹ In relevant part, that provision states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

1. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 et seq).

(a) institutions of public charity.

The controversy arises as follows:

Prior to this proceeding, the Department of Revenue (hereinafter the "Department") determined that two properties (which are not at issue herein) owned by St. Clare Hospital of Monroe, Wisconsin (hereinafter the "applicant") were exempt from real estate taxation under the versions of Section 200/15-65 that were in effect at the time the properties were determined exempt. The first exemption determination was issued June 24, 1993 and pertained to Stephenson County Parcel Number 11-07-33-180-005. The second was issued March 24, 1994 and affected Winnebago Parcel Number 339A-001A [sic]. (Dept. Ex. No. 3).

On December 8, 1994, applicant filed an Application for Property Tax Exemption (hereinafter the "Application") with the Stephenson County Board of Review (hereinafter the "Board") as to Stephenson County Parcel Number 18-18-02-101-001. Said complaint alleged that the subject property was exempt from 1994 real estate taxes under the statutory provisions pertaining to "institutions of public charity." (Dept. Ex. No. 1).

The Board reviewed the Application and recommended to the Department that the property be exempted from taxation for that part of the assessment year which began on October 13, 1994 and ended on December 31, 1994. (*Id.*). The Department subsequently rejected this recommendation by issuing a certificate, dated November 9, 1995, finding that the subject parcel "is not in exempt use."

Applicant filed a timely request for hearing as to this denial on November 22, 1995. After holding a pre-trial conference, the Administrative Law Judge conducted an evidentiary hearing on October 21, 1996. Following submission of all evidence and a careful review of the record, it is recommended that the subject parcel be exempt from real estate taxes for 22% of the 1994 assessment year.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter, and its position therein, namely the subject parcel was not in exempt use during 1994, are established by the admission into evidence of Dept. Ex. Nos. 1 through 3.

2. On June 24, 1993, the Department determined that Parcel Number 11-07-33-180-005, owned by applicant and located in Stephenson County, was exempt from real estate taxes under the then-existing version of Section 200-15/65. Administrative Notice.

3. On March 25, 1994, the Department determined that Parcel Number 339A-001, owned by applicant and located in Winnebago County, was exempt from real estate taxes under the then-existing version of Section 200-15/65. Administrative Notice.

4. The real estate at issue in this proceeding is identified by Stephenson County Parcel Number 18-18-02-101-001. It is triangular in shape and encompasses approximately 8,000 square feet. Dept. Ex. Nos. 1 and 2; Applicant Ex. Nos. 1 and 3.

5. Applicant is a not-for profit corporation that is owned and sponsored by the Congregation of the Sisters of St. Agnus in Fond Du Lac, Wisconsin. It is incorporated in Illinois and Wisconsin and maintains its main campus out-patient facility in Monroe, Wisconsin. Applicant Ex. Nos. 18, 28.

6. Applicant entered into a contract for purchase of the subject parcel on August 16, 1994. It obtained its ownership interest therein via a trustees deed dated October 13, 1994. Dept. Ex. No. 1; Applicant Ex. Nos. 2, 3 and 6.

7. Applicant acquired the subject parcel because it intended to build an out-patient clinic that would service those hospital patients who resided in the Freeport area. Although it closed on the property in October of 1994, it did not actually break ground on the subject premises until May 11, 1995. Applicant Ex. No 9; Tr. p. 18.

8. The subject parcel remained vacant throughout the period between closing and groundbreaking. However, applicant received a feasibility study

concerning the proposed development in August of 1994. It also took the following steps in furtherance of same between October, 1994 and May, 1995: first, it ordered a soil borings report and received same on October 6, 1994; second, it prepared a design package which it distributed to numerous design construction firms; third, it employed architects; fourth, with the help of an engineering firm, it prepared and finalized plans for the building bridging; and fifth, it began the process of bid-letting. Dept. Group Ex. No. 1. Applicant Ex. Nos. 4, 8 and 9; Tr. pp. 33.

CONCLUSIONS OF LAW:

On examination of the record established this applicant has demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting Stephenson County Parcel Number 18-18-02-101-001 from real estate taxes for 22% of the 1994 assessment year 35 ILCS 200/15-65. Accordingly, under the reasoning given below, the Department's finding that the subject parcel was not used for statutorily exempt purposes during 1994 should be reversed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly

to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 et seq. The provisions of that statute that govern disposition of the instant proceeding are found in Section 200/15-65. In relevant part, that provision states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

35 **ILCS** 200/15-65.

It is well established in Illinois that a statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968) (hereinafter "Nordlund"); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, the appropriate exemption pertains to "institutions of public charity." Illinois courts have long refused to apply this exemption absent

suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968).

In this case, administrative notice of the Department's determinations dated June 24, 1993 and March 25, 1994 establish that this applicant is an "institution of public charity." Given that applicant has not challenged either determination, I shall leave same undisturbed and limit any remaining analysis to the use issue.

Analysis of that topic begins with recognition of the fact that applicant did not acquire ownership of the subject parcel until October 14, 1994. Consequently, its exemption claim is limited to 22% of the 1994 assessment year under 35 ILCS 200/9-185.² One must also recognize the fundamental principle that "evidence that land was acquired for an exempt purpose does not eliminate the need for proof of actual use for that purpose." Therefore, the "[i]ntention to use is not the equivalent of actual use." Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994).

².The relevant portion of that provision states as follows:

The purchaser of property on January 1 shall be considered the owner [who is therefore liable for any taxes due] on that day. However, when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed. Whenever a fee simple title or lesser interest in property is purchased, granted taken or otherwise transferred from a use exempt from taxation under this Code to a use not so exempt, that property shall be subject to taxation from the date of the purchase or conveyance.

In Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987), the court held that a portion of appellant's health care facility could be exempted from real estate taxes even though it was being adopted and developed for exempt use during the year in question.

Based on the soil borings report dated October 6, 1994 (Applicant Ex. No. 8), I conclude that this applicant engaged in appropriate adoption and development of the subject premises during 22% of the 1994 assessment year. Therefore, the Department's decision to the contrary should be reversed.

WHEREFORE, for all the above stated reasons, it is my recommendation that Stephenson County Parcel Number 18-18-02-101-001 be exempt from real estate taxes for 22% of the 1994 assessment year.

Date

Alan I. Marcus
Administrative Law Judge